IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2021 of 2002
To
FIRST APPEAL No. 2022 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER AND ANOTHER
Versus
ISHWARSINGH BHUPATSINGH

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Appearance :
MR RR MARSHALL for the appellant

MR AJ PATEL for the respondent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 10/08/2006

COMMON ORAL JUDGMENT

Since common point is involved in these appeals, both these appeals are being disposed of by this common judgment and order.

By filing these appeals under Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code the acquiring body – ONGC has challenged the order of the Reference Court delivered in Reference Cases Nos.2799 of 1996 and 2800 of 1996. By the common judgment the learned Judge of the Reference Court has disposed of both the References. The learned Judge granted additional compensation to the claimants at the rate of Rs.12.50 per square meter over and above the amount of compensation awarded by the Special Land Acquisition Officer. The Special Land Acquisition Officer awarded Rs.4.50 per square meter. Accordingly, the learned Judge has fixed Rs.17 per square meter as the appropriate valuation of the land in question against which these appeals are filed by the acquiring body.

The Notification under Section 4 of the Act was issued on 19.12.1993 followed by Section 6 Notification which was issued on 10.4.1995. Thereafter, after considering the say of the claimants he Land Acquisition Officer has declared his award by which he has fixed the value of the land at Rs.4.50 per square meter. Since the claimants were not satisfied with the award as according to them the proper value of the land should be Rs.30 per square meter, a reference was made under Section 18 of the Act before the District Court. The learned Trial Judge after considering the facts and circumstances of the case and considering the topography of the land assessed the market value of the land at Rs.17 per square meter.

At the time of hearing of these appeals, a copy of the judgment of

the Division Bench of this Court is placed on record by which the Division Bench has disposed of First Appeals Nos.2441 to 2443 of 2003 on 13.04.2004. In the aforesaid case also the land of the very village was acquired and notification under Section 4 was issued on the same date i.e. on 19.12.1993. The Division Bench has upheld the judgment of the Reference Court in that case by which Rs.17 was fixed as the appropriate market value per square meter. In the instant case the Division Bench while dismissing the appeals summarily has found that on the basis of the earlier award the proper price is fixed by the Court. In paragraph 4 the Division Bench has observed as under:-

> *"4. In our opinion, the above submission is devoid of any merit. This Court, in 2nd Special Land Acquisition Officer, Kheda v. Chunilal Gangaram, reported in 40(2) GLR 1357 has clearly held that the award declared for the village having common simada can be relied upon. In any case, the said evidence produced by the claimant is not challenged before higher forum and therefore, the previous award is binding to the appellant. The Reference Court has also taken into consideration the date of notification in the said award as well as in the present reference. Section 4 notification was published on 3.4.1994 with respect to the award Exh.17 while in the present case, Section 4 notification is dated 19.12.1993. Thus, taking into consideration the difference, the Reference Court has rightly not awarded 10% price rise for the said period."*

It is not in dispute that in the instant case the village is same with which the Division Bench was concerned and the notification under Section 4 in the instant case was issued on 19.12.1993 whereas in the case before the Division Bench also the notification under Section 4 of the Act was issued on 19.12.1993. Since the reference of the same

village and which is an identical matter was upheld by the Division Bench of this Court by dismissing group of appeals filed by the acquiring body, the present appeals are also required to be dismissed. Learned counsel, Mr Marshal however submitted that in the aforesaid two appeals reliance was placed by the trial Court on Exhibit 17, which was an award in some other village. According to him, the reference in that case was set aside and the matter was remanded. However, so far as the present case is concerned, for the same village the Division Bench of this Court has upheld the value of the land on the parity and when the decision of the Division Bench of this Court is still holding the field since there is nothing on record to indicate whether the said order was reviewed or was taken further in higher forum, on the basis of principles of parity, the order of the Reference Court which has fixed the value of the land at Rs.17 per square meter is required to be confirmed.

In that view of the matter, both these appeals are required to be dismissed and they are accordingly dismissed. Record and Proceedings be sent back to the trial Court forthwith.

(P.B.Majmudar, J.)

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